

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ADRIAN LYNN VASSEL,

Appellant.

No. 37699-7-II

UNPUBLISHED OPINION

Penoyar, J. — Adrian Lynn Vassel pleaded guilty to second degree assault and first degree reckless burning. After receiving Vassel’s statement on plea of guilty, the trial court questioned Vassel to determine if his plea was knowingly, voluntarily, and intelligently made. The trial court accepted his plea and sentenced him to 60 months’ incarceration. Vassel now appeals, alleging that the trial court’s failure to fully advise him of his waived rights and the direct consequences of his guilty plea rendered his plea involuntary. In a statement of additional grounds for review (SAG),¹ Vassel also contends that the trial court improperly calculated his offender score. We affirm.

FACTS

On June 18, 2007, the State charged Vassel with one count of first degree arson,² one count of first degree burglary,³ and one count of second degree assault.⁴ The State later filed an

¹ RAP 10.10.

² In violation of RCW 9A.48.020(1)(c).

³ In violation of RCW 9A.52.020(1)(a).

⁴ In violation of RCW 9A.36.021(1)(c).

amended information dismissing the burglary charge and reducing the first degree arson charge to first degree reckless burning.⁵

Vassel entered a guilty plea to second degree assault and first degree reckless burning on March 14, 2008. In his statement on plea of guilty,⁶ Vassel acknowledged the charges against him, including the specific elements of each charge. He also acknowledged that he would be waiving several rights by pleading guilty, including the right to trial, the right to remain silent, the right to examine witnesses, the right to testify, the right to be presumed innocent, and the right to appeal a finding of guilt or pretrial motions. Finally, he acknowledged the standard sentencing range, the maximum sentence, and the State's recommended sentence for each charge.

In the statement on plea of guilty form, Vassel wrote a short statement explaining, "I have reviewed the evidence and believe I would be convicted at trial in all likelihood. I therefore plead guilty to take advantage of the State's offer to reduce the charges." Clerk's Papers (CP) at 13. Vassel initialed the form in three separate places. First, he initialed a notification regarding most serious offenses, then he initialed the waiver of his rights, and finally he initialed his statement. Additionally, on the final page of the statement, Vassel signed the following: "My lawyer has explained to me, and we have fully discussed, all of the above paragraphs . . . I understand them all. I have been given a copy of this 'Statement of Defendant on Plea of Guilty.' I have no further questions to ask the judge." CP at 14.

At the plea hearing, the trial court questioned Vassel regarding his understanding of the

⁵ In violation of RCW 9A.48.040(1).

⁶ Vassel submitted a standard statement on plea of guilty (non-sex offense) form in this case.

guilty plea and its effects on sentencing and appellate review. Vassel confirmed to the trial court that he had discussed the statement with his attorney and that he understood the charges against him. He acknowledged that he was aware that he was waiving certain rights by pleading guilty, including the right to trial, the right to confront witnesses, and other rights. He acknowledged that he was aware of the State's sentencing recommendation, that he was pleading guilty to take advantage of that recommendation, and that the trial court was not obligated to impose the State's recommended sentence. He confirmed that he understood that if the judge accepted his plea it would have the same effect as an admission of guilt for purposes of sentencing. Finally, Vassel affirmed that he made his plea freely and voluntarily with counsel's advice.

The trial court asked defense counsel if there was any reason it should not accept Vassel's plea. Defense counsel said no. After reviewing the declaration the State submitted with the original charging documents, the trial court accepted Vassel's plea and set a sentencing date. At sentencing, Vassel stipulated that he had an offender score of eight for purposes of the second degree assault charge and a score of seven for the reckless burning charge. The trial court sentenced him to 60 months' incarceration for the second degree assault and 18 months' community custody for the reckless burning. Vassel now appeals.

ANALYSIS

Vassel contends that the trial court erred by accepting his guilty plea without informing him of (1) the maximum sentence for each charge; (2) the mandatory minimum sentence for each charge;⁷ (3) the elements of each charge; and (4) the constitutional rights he would be waiving by

⁷ Neither second degree assault nor first degree reckless burning impose a mandatory minimum. RCW 9A.20.021(1)(b) and (c).

entering his plea. Because the trial court did not inform him of these things, Vassel argues, he suffered manifest injustice and should be allowed to withdraw his plea.

“Due process requires that a defendant’s guilty plea be knowing, voluntary, and intelligent.” *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). Likewise, CrR 4.2(d) mandates that the trial court not accept a guilty plea without first determining that a criminal defendant has entered into the plea voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. *See also State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (stating that for a plea to be knowing and voluntary, a criminal defendant must be informed of all direct consequences of his plea). A court must allow a defendant to withdraw a guilty plea whenever “necessary to correct a manifest injustice.” CrR 4.2(f); *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). A manifest injustice is one “that is obvious, directly observable, overt, not obscure.” *Taylor*, 83 Wn.2d at 596.

A strong presumption that a plea is voluntary exists when a defendant completes a plea statement and admits to reading, understanding, and signing it. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). Furthermore,

[w]hen a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and acknowledges that he or she has read it and understands it and that its contents are true, the written statement provides prima facie verification of the plea’s voluntariness. When [a] judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.

State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982) (citations omitted).

Focusing on the colloquy, Vassel argues that his plea was involuntary. However, the

record as a whole, including the trial court's questioning and the statement on plea of guilty, demonstrates that Vassel's plea was knowing, voluntary, and intelligent. Therefore, we affirm.

I. Maximum Sentences

Vassel first argues that the trial court failed to inform him of the direct consequences of his plea, namely the minimum and maximum sentence for each charge. Vassel reasons that this alleged failure caused him to make an involuntary plea and that he has suffered manifest injustice as a result. He asks us to remand his case so that he may withdraw his plea. His arguments fail because the plea documents explicitly listed the sentencing range and maximum sentence for each charge.

Consistent with due process requirements under CrR 4.2(g), "[a] defendant must be informed of the statutory maximum for a charged crime, as this is a direct consequence of his guilty plea." *State v. Weyrich*, 163 Wn.2d 554, 557, 182 P.3d 965 (2008). Washington courts have held that "[k]nowledge of the direct consequences of a guilty plea can be satisfied . . . by the plea documents" *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001) (citing *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976)). The second page of Vassel's statement on plea of guilty provides the standard ranges, maximum terms, fines, and community custody ranges for both charges. Vassel signed the statement on plea of guilty and told the judge at his plea hearing that he had reviewed the statement with his attorney. The statement on plea of guilty informed Vassel of the direct consequences of his plea, including the maximum sentence for each charge, and Vassel indicated in the statement that he knew and understood the plea documents. It is quite clear that Vassel knew the penalties he was facing and

there is no basis to reverse on this issue.⁸

II. Elements of Vassel's Charges

Vassel next argues that his plea was involuntarily because the trial court failed to advise him of the elements (nature) of each crime. Like his claims regarding the direct consequences of his plea, Vassel's argument fails because his statement on plea of guilty explicitly lists the elements of both second degree assault and first degree reckless burning. Vassel signed the plea statement and affirmed that he understood the statement at his plea hearing. Furthermore, at the plea hearing, Vassel acknowledged that he understood the charges against him.

III. Constitutional Rights

Finally, Vassel contends that his plea was involuntary because the trial court did not explicitly list every right he would waive by pleading guilty. Vassel's argument fails because a trial judge is not required to articulate each right the defendant is waiving at the time of accepting of his guilty plea when the record establishes that the plea was intelligently and voluntarily made. *State v. Branch*, 129 Wn.2d 635, 644, 919 P.2d 1228 (1996) (quoting *Wood*, 87 Wn.2d at 508)).

The record must show that in pleading guilty, the defendant understood that he was relinquishing three constitutional rights: the right to jury trial, the right to confront one's accuser, and the privilege against self-incrimination. *State v. Elmore*, 139 Wn.2d 250, 269, 985 P.2d 289 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), *superseded by statute on other grounds as stated in United States v. Gomez/Cuevas*, 917 F.2d 1521 (10th Cir. 1990)). Express articulation is not required. *Branch*, 129 Wn.2d at 644. In

⁸ Neither the trial court nor the pleading form addressed the mandatory minimum sentence for either charge because neither charge imposes a mandatory minimum.

Branch, the Washington Supreme Court held that “there is no constitutional requirement that there be an express articulation and waiver of the three rights . . . by the defendant at the time of acceptance of his guilty plea if it appears from the record . . . that the accused’s plea was intelligently and voluntarily made, with knowledge of its consequences.” 129 Wn.2d at 644 (quoting *Wood*, 87 Wn.2d at 508).

Vassel incorrectly asserts that the trial court failed to inform him of his constitutional rights. Both his statement on plea of guilty and the trial court’s colloquy apprised him of these rights. Vassel signed a written plea form in compliance with CrR 4.2(g) and confirmed to the trial judge that he understood that he was waiving certain constitutional rights. Additionally, Vassel initialed the constitutional rights section of the statement, which listed each constitutional right he was waiving.

Despite Vassel’s contentions, the record clearly demonstrates that Vassel knowingly and voluntarily entered his guilty plea. The statement explicitly stated the constitutional rights he would waive by pleading guilty and the elements and maximum sentence for each offense. Vassel signed the statement on plea of guilty and affirmed to the trial court that he understood the contents of the form. We find Vassel’s plea to be voluntary and affirm his conviction.

IV. SAG

Additionally, Vassel argues that the trial court improperly calculated his offender score at sentencing. Specifically, he claims that the trial court improperly calculated a “multiplying factor” based on the burglary charge included in the original charging documents. SAG at 1. Vassel explains that although the State dropped the burglary charge, it did not drop the multiplying factor

from his sentencing documents. Vassel contends that he should have had an offender score of six, not eight felony points. Vassel waived his right to appeal this issue, however, when he stipulated to his offender score at sentencing.

A sentencing court may rely on a defendant's acknowledgement of the classification of his prior offenses. *State v. Ford*, 137 Wn.2d 472, 483, 973 P.2d 452 (1999). Alleged errors as to stipulated facts or offender score calculations are not subject to direct appeal. *State v. Huff*, 119 Wn. App. 367, 371, 80 P.3d 633 (2003) (citing *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 874, 50 P.3d 618 (2002)). Vassel expressly stipulated to his offender score for each charge. Thus, he waived his right to challenge the trial court's offender score calculation on appeal.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Van Deren, C.J.

Bridgewater, J.